

REMARKS

The present RCE is being filed in lieu of payment of the Issue Fee in order to resolve the claim of priority issue set forth in the Notice of Allowability.

As a consequence, the application is again amended to assert a claim of priority all the way back to the Japanese priority application. In addition, the application is amended to accept the Examiner's Amendment of the claims. The subject matter presented in this RCE is thus allowable and has been allowed. The Examiner has stated reasons for allowance. While those reasons are believed to be correct, they are not the sole reasons for patentability. The scope of the claims should be limited solely by the prior art.

It appears that in the Amendment filed November 9, 2004, the Substitute Amendment filed March 21, 2005 and the Examiner's Amendment dated April 7, 2005, there was a typographical error in the filing date for Serial No. 09/889,318. The correct filing date should be July 13, 2001 and not January 13, 2001.

Applicants respectfully traverse the Examiner's refusal to recognize the claim of priority back to the originally-filed U.S. national phase application Serial No. 09/889,318. There can be no question that continuity of prosecution has been maintained and with that continuity of prosecution a chain of priority all the way back to Serial No. 09/889,318, PCT/JP00/00134 and JP 11-6914. In the Notice of Allowability, the Examiner has stated that "Acknowledgement is made of a claim of foreign priority under 35 U.S.C. §§ 119(a)-(d) or (f). All certified copies of the priority documents have been received in Application No. 09/889,318." In view of this acknowledgement and the continuity of prosecution, there can be no doubt that priority was claimed all the way back to the Japanese priority application.

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In the parent application Serial No. 10/288,369, now U.S. Patent No. 6,780,145, the claim of priority is stated "This application is a divisional of U.S. application Serial No. 09/889,318, filed Jul. 13, 2001, which is a 371 of PCT/JP00/00134 file Jan. 13, 2000." When the present application was filed, the Utility Patent Application Transmittal form expressly incorporated the disclosure of the parent application (Serial No. 10/288,369) by reference: "FOR CONTINUATION OR DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b is considered a part of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts." Thus, the parent application (Serial No. 10/288,369) made the claim of priority and the parent application was incorporated by reference into the present application.

The refusal to recognize and accord this claim of priority is the ultimate application of form over substance. In view of the facts, no petition should be required and the refusal to accord the claim of priority should be reconsidered and withdrawn.

Entry of this Preliminary Amendment and a new Notice of Allowance according the full claim of priority are respectfully solicited. If the Examiner continues to require a Petition, Applicants request that a non-final action (rather than a Notice of Allowance) be provided stating the requirement so that the Petition can be addressed and resolved prior to any requirement for payment of an Issue Fee.

In the event that there are any questions relating to this Preliminary Amendment or to the application in general, it would be appreciated if the examiner would telephone the

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undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (000004-00682). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this response, Applicants hereby petition under 37 C.F.R. 1.136(a) for an extension of time for as many months as are required to render this submission timely.

Any fees due are authorized above.

Respectfully submitted,

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